

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for repetitive traumas and cumulative injury to the neck and back between January 1993 and February 1994. After finding that Ms. Stroud's injuries were caused by a July 1991 accident instead of the alleged repetitive traumas, the Judge denied the request for benefits.

The issues before the Board on this appeal are:

1. Did Ms. Stroud injure her neck or back while working for Bourbon County between January 1993 and February 1994?
2. Did she provide the County with both timely notice of the accidental injury and timely written claim?
3. What is the nature and extent of her injury and disability?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. In March 1991, Ms. Stroud began working for Bourbon County as caretaker of Elm Creek Lake. In July 1991, she injured her back and neck when the wind caught a heavy picnic table that she was painting jerking her off her feet and popping her spine. The next day she had symptoms in her neck, back, and arms.
2. Ms. Stroud did not immediately seek medical treatment. But in August 1991 she saw her personal chiropractor who adjusted her neck and back. Although her symptoms improved after the chiropractic treatment, she continued to experience constant pain and other symptoms. She did not seek additional treatment until February 1993 when she caught a cold and experienced excruciating pain in her neck and low back whenever she coughed or sneezed. Eventually, in October 1993, Ms. Stroud had low back surgery for a herniated disc between the fourth and fifth lumbar intervertebral levels.
3. Ms. Stroud did not perform any physical or strenuous work after late January or early February 1993 when she experienced debilitating pain when she coughed or sneezed. At her January 1995 deposition, she testified:

I have not worked physically, on the lake, since January of 1993, other than my paperwork in the office. And I do do that. I fill out boat permits and set up shelter house reservations.

4. Although this claim was filed and litigated as a period of accident commencing January 1993, the only accident that Ms. Stroud can identify and the only accident that she believes she sustained working for Bourbon County is the July 1991 picnic table incident.

5. The Appeals Board affirms the Judge's finding that Ms. Stroud has failed to prove that she injured either her neck or back while working for Bourbon County during the period of the alleged accident from January 1993 through February 1994. No finding is made whether Ms. Stroud's present complaints and problems are due to the July 1991 accident as that incident was not included as part of this claim.

CONCLUSIONS OF LAW

1. The Board affirms the denial of benefits.

2. In workers compensation proceedings, employees have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which their rights depend.¹

3. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²

4. Because Ms. Stroud has failed to prove she sustained a work-related injury from January 1993 through February 1994 as alleged in her claim, the request for benefits must be denied. Again, no findings or conclusions are made regarding the July 1991 accident as it was not included as part of this claim and the issues surrounding that accident date were not litigated. Any contrary statement, finding, or conclusion contained in the Award is set aside.

5. Likewise, no finding or conclusion is made whether the medical treatment that Bourbon County and its insurance carrier provided pursuant to the preliminary hearing award entered in this proceeding was actually related to and payable for the July 1991 accident that Ms. Stroud sustained while working for the County.

6. Should the County or its insurance carrier feel that either has paid benefits in an amount greater than what Ms. Stroud was entitled to receive, they may request certification from the Director.³

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

³ See K.S.A. 1998 Supp. 44-534a(b).

7. Based upon the above findings and conclusions, the remaining issues are rendered moot.

AWARD

WHEREFORE, the Appeals Board affirms the denial of benefits in the August 17, 1998 Award entered by Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Vivian Ruth Stroud, 101 W Baker St, Farlington, KS 66734
John David Jurcyk, Lenexa, KS
Robert V. Talkington, Iola, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director